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10 *Attorneys for Plaintiffs and the putative Classes*

11  
12 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

13 ROBERT JORDAN, SEAN HALBERT and  
14 DANA SKELTON, individually and on  
behalf of all others similarly situated,

15 *Plaintiffs,*

16 v.

17 NATIONSTAR MORTGAGE LLC, a  
18 Delaware limited liability company,

19 *Defendant.*

Case No. 3:14-cv-787

**JOINT CASE MANAGEMENT  
STATEMENT**

1 Plaintiffs Robert Jordan, Dana Skelton, and Sean Halbert (“Plaintiffs”) and Defendant  
2 Nationstar Mortgage LLC (“Nationstar”) submit this Joint Case Management Statement.

3 On May 2, 2014, the Parties Conducted the conference required by Fed. R. Civ. P. 26(f).  
4

## 5 1. JURISDICTION AND SERVICE

6 **PLAINTIFFS:** This court has subject matter jurisdiction under 28 U.S.C. § 1331  
7 because this case arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227, a federal  
8 statute. There are no issues regarding personal jurisdiction or venue and all parties have been  
9 properly served.

10 **DEFENDANT:** This court has subject matter jurisdiction under 28 U.S.C. § 1331  
11 because this case arises under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §  
12 227, a federal statute. The Federal Communications Commission (“FCC”) has primary  
13 jurisdiction over specific issues that are central to resolution of this case, including but not limited  
14 to the definition of an “automatic telephone dialing system” as that term is defined by the TCPA,  
15 whether the TCPA applies to non-telemarketing calls, the meaning of the term “called party” as  
16 that term is used in the TCPA, and whether and in what manner consent can be revoked.  
17

## 18 2. FACTS

19 **PLAINTIFFS:** This case challenges Defendant’s alleged practice of making  
20 unsolicited auto-dialed telephone calls to Plaintiffs and the putative Class members to their  
21 cellular telephones and/or using a pre-recorded voice without receiving consent to make those  
22 calls. Defendant placed and continues to place phone calls to consumers who never provided their  
23 telephone number to Defendant, and Defendant acquires phone numbers through various means,  
24 including through “skip tracing” and “number trapping.” In making the calls, Defendant utilizes an  
25 automatic telephone dialing system (“ATDS”) and the calls feature artificial or pre-recorded  
26 messages instead of live operators without an option to stop the calls. The only way for a  
27 consumer to speak with a live operator and request that the calls be stopped is by providing  
28 personal identifying information such as a social security number. Defendant often places calls to

1 persons who do not have a mortgage serviced by Nationstar—thus, Nationstar often places calls to  
2 the wrong people.

3           **DEFENDANT:** Plaintiffs allege that Nationstar violated the TCPA by initiating  
4 debt collection calls to Plaintiffs’ cellular telephones without prior express consent using an  
5 automatic telephone dialing system (“ATDS”). However, in their pleading, Plaintiffs have not  
6 identified the cellular telephone numbers at issue. *See, e.g., Strand v. Corinthian Colleges, Inc.*,  
7 2014 WL 1515494, at \*3 (W.D. Mich. April 17, 2014) (“A plain reading of the [TCPA] then,  
8 shows that to prove her case a plaintiff must prove that a defendant called a specific telephone  
9 number and that the telephone number was assigned to a cellular telephone service. Notice  
10 pleading, therefore, under *Twombly* and *Iqbal*, necessarily requires that a plaintiff plead the  
11 telephone number in question to ‘raise a right to relief above the speculative level.’”). As a result,  
12 Nationstar is without sufficient knowledge or information to form a belief as to the truth of the  
13 allegations above. Nationstar does not use an ATDS to place telephone calls, and Nationstar does  
14 not have a practice of placing calls to persons who do not have a mortgage serviced by Nationstar.  
15 Nationstar denies Plaintiffs’ allegations and denies that it caused any damages claimed by  
16 Plaintiffs.

### 17 18           **3.       LEGAL ISSUES**

19           **PLAINTIFFS:** Nationstar has not yet filed a dispositive motion in this case, but  
20 has instead answered the Complaint and provided boilerplate affirmative defenses that Plaintiffs  
21 have moved to strike. It is thus unclear at this time which points of law may be disputed. During  
22 the Rule 26(f) conference, Nationstar’s counsel indicate that Nationstar may challenge Plaintiffs’  
23 decision to not identify their telephone numbers in the Complaint and may argue that the FCC is  
24 presently reviewing its position on some of the key points of law in this case so as to deprive this  
25 Court of jurisdiction.

26           **DEFENDANT:** Based on the limited set of facts available to Nationstar thus far,  
27 Nationstar anticipates litigating the following legal issues:  
28

1. Whether Plaintiffs are required to identify in their complaint the cellular telephone numbers at issue in order to satisfy the pleading standards of *Twombly* and *Iqbal*.
2. Whether Plaintiffs' action should be stayed pursuant to the primary jurisdiction doctrine.
3. Whether dialing equipment that lacks the *current* capacity for random or sequential dialing constitutes an automatic telephone dialing system as that term is defined by the TCPA.
4. Whether the TCPA applies to non-telemarketing calling activity, such as debt collection calls, about which Plaintiffs complain.
5. Whether Nationstar had "consent" to place the alleged calls to Plaintiffs' cellular telephones, as the term "consent" has been interpreted by courts and the FCC.

#### 4. MOTIONS

**PLAINTIFFS:** To the extent necessary, Plaintiffs anticipate filing motions to transfer and relate another lawsuit that has been recently filed against Nationstar in the Central District of California challenging its calls to consumers—*Ruggles v. Nationstar*, Case No. 5:14-cv-00363-BRO-FFM (C.D. Cal.) ("*Ruggles*"). Plaintiffs also anticipate moving for class certification following appropriate discovery. Plaintiffs also contest Defendant's assertions that the FCC has primary jurisdiction or that the cases should be stayed.

**DEFENDANT:** On May 14, 2014, Plaintiffs withdrew their Motion to Strike Affirmative Defenses without prejudice (Dkt. 24). On May 16, 2014, the United States District Court for the Central District of California transferred the *Ruggles* case to this court in response to the parties' Stipulation to Transfer *Ruggles* to the Northern District of California.

Nationstar will move to stay these lawsuits pursuant to the primary jurisdiction doctrine. In its motion, Nationstar will establish that these cases should be stayed pursuant to the doctrine of primary jurisdiction because the FCC, rather than the Court, has primary jurisdiction to decide critical legal issues that lie at the heart of this case. Nationstar reserves its right to file a motion for summary judgment, or in the alternative, summary adjudication, at the appropriate time.

1           **5.       AMENDMENT OF PLEADINGS**

2           **PLAINTIFFS:** Amendments may be needed to conform the pleadings to the facts  
3 obtained during discovery in support of class certification. Additionally, with respect to the  
4 *Ruggles* case, Plaintiffs anticipate needing to file a Consolidated Class Action Complaint  
5 following approval of any transfer and motion to deem the cases related. Plaintiffs propose a  
6 deadline of six (6) weeks from the date of this Joint Case Management Statement for the transfer  
7 to be effectuated and then four (4) weeks thereafter to amend the pleadings and file a consolidated  
8 Complaint.

9           **DEFENDANT:** On May 16, 2014, the United States District Court for the Central  
10 District of California transferred the *Ruggles* case to this court in response to the parties'  
11 Stipulation to Transfer *Ruggles* to the Northern District of California. Nationstar will file a  
12 response to Plaintiffs' anticipated Consolidated Class Action Complaint. Nationstar will also  
13 move to stay these lawsuits pursuant to the primary jurisdiction doctrine.

14  
15           **6.       EVIDENCE PRESERVATION**

16           The parties have reviewed the Guidelines Relating to the Discovery of  
17 Electronically Stored Information ("ESI Guidelines") and have met and conferred pursuant to Fed.  
18 R. Civ. P. 26(f) regarding reasonable and proportionate steps to preserve evidence relevant to the  
19 issues reasonably evident in this action. Both parties represent that they are satisfactorily  
20 preserving evidence.

21  
22           **7.       DISCLOSURES**

23           No Initial Disclosures have been made, but the Parties have stipulated to a short  
24 extension until June 3, 2014 to make their Initial Disclosures.

25  
26           **8.       DISCOVERY**

27           **PLAINTIFFS:** No discovery has been taken to date. Plaintiffs' preference is to  
28 not bifurcate discovery between class and merits issues and to instead conduct all discovery

1 simultaneously. Because of the anticipation that the *Ruggles v. Nationstar* case will be transferred  
2 to this District and that a consolidated Complaint will be subsequently filed, Plaintiffs believe the  
3 discovery period should be built around that Complaint. Thus, Plaintiffs' propose an eight (8)  
4 month period for discovery beginning on the day Nationstar answers the consolidated Complaint.  
5 After the close of discovery, Plaintiffs request thirty (30) days to move for class certification, and  
6 then a shorter period after that Motion for Class Certification is decided to complete any  
7 remaining discovery.

8 As to the scope of discovery, Plaintiffs anticipate requiring information regarding the  
9 following, without limitation: (1) the dialing system(s) Nationstar used to call Plaintiffs and the  
10 class members, (2) the telephone numbers Nationstar used to place the calls, (3) Nationstar's  
11 processes and procedures for obtaining consent to call consumers, (4) Nationstar's methods for  
12 obtaining the numbers it called, (5) the equipment Nationstar uses to make telephone calls using a  
13 pre-recording voice, (6) records showing the number of calls at issue, (7) Nationstar's procedures  
14 for managing and updating any Do Not Call list, (8) Nationstar's procedures for ensuring that any  
15 prior mortgage servicer from whom it acquired loans obtained consent to call consumers, and (9)  
16 Nationstar's use of methods such as "skip tracing" to acquire phone numbers. Plaintiffs reserve all  
17 rights to request additional discovery should additional relevant matters come to light through the  
18 pleadings or discovery.

19 The parties have discussed entering into a stipulated e-discovery order. Plaintiffs are  
20 drafting the order and will circulate the draft to Nationstar over the next couple of weeks.

21 **DEFENDANT:** Nationstar believes discovery should be reasonably focused on  
22 class issues first (e.g. the number of class members, existence of common questions, typicality of  
23 claims, representative's ability to represent class) and then on merits issues to minimize the  
24 discovery burden on the parties and the court. Although Nationstar does not propose any specific  
25 bifurcated discovery plan at this time, it believes the parties can first conduct the class-related  
26 discovery necessary for this action in an efficient, cooperative and reasonable manner in  
27 accordance with the requirements of the Federal Rules of Civil Procedure. To the extent the class-  
28

1 related discovery overlaps with discovery governing merits issues, the parties will work together  
2 to find an appropriate method to resolve any issues.

3  
4 **9. CLASS ACTIONS**

5 **PLAINTIFFS:** Plaintiffs propose that a motion for class certification should be  
6 filed thirty (30) days after the close of discovery. Prior to that date, Plaintiffs will require eight (8)  
7 months to complete discovery.

8 Though Plaintiffs may need to amend their class definitions, three classes are currently  
9 pleaded:

10  
11 **Cell Phone Class:** All individuals in the United States to whom Defendant (1) placed a  
12 telephone call to his or her cellular telephone; (2) that was made utilizing an automatic telephone  
13 dialing system; (3) which related to Defendant's products or services; and (4) Defendant does not  
14 have a record of consent to place telephone calls to his or her cellular telephone number.

15 **RoboCall Class:** All individuals in the United States to whom Defendant (1) placed a  
16 telephone call that featured an artificial or pre-recorded voice; (2) which related to Defendant's  
17 product or services; and (4) [*sic*] he or she never consented to receive robocalls from Defendant at  
18 that telephone number.

19 **Opt-Out Class:** All individuals in the United States to whom Defendant (1) placed a  
20 telephone call to his or her cellular telephone; (2) that was made utilizing an automatic telephone  
21 dialing system; (3) which related to Defendant's products or services; (4) and, following such  
22 calls, he or she made a request to Defendant that he or she no longer receive telephone calls from  
23 Defendant and; thereafter, (5) Defendant placed additional telephone calls to his or her cellular  
24 telephone.

25 **DEFENDANT:** Nationstar denies that class members are ascertainable or  
26 identifiable, denies that questions of law or fact common to class members predominate over any  
27 questions affecting individual members, denies that Plaintiffs' claims are typical of or common to  
28 those belonging to the putative class, and denies that this action is appropriate for class treatment.  
Nationstar denies that it negligently or willfully violated the TCPA, and denies that Plaintiff or the  
putative class members suffered or are entitled to any damages.

1           **10.     RELATED CASES**

2                   **PLAINTIFFS:** Plaintiffs are aware of one case that is related: *Ruggles v.*  
3 *Nationstar*, Case No. 5:14-cv-00363-BRO-FFM, United States District Court for the Central  
4 District of California.

5                   **DEFENDANT:** On May 16, 2014, the United States District Court for the Central  
6 District of California transferred the *Ruggles* case to this court in response to the parties'  
7 Stipulation to Transfer *Ruggles* to the Northern District of California. Nationstar will file a  
8 response to Plaintiffs' anticipated Consolidated Class Action Complaint.

9  
10           **11.     RELIEF**

11                   **PLAINTIFFS:** Plaintiffs seek the following relief though their Complaint:

- 12                   (i) an order certifying the Classes as defined, appointing Plaintiffs as  
13                   representatives of the Classes and appointing their counsel as Class  
14                   Counsel;  
15                   (ii) an award of actual and statutory damages;  
16                   (iii) an injunction requiring Defendant to cease all unsolicited telephone  
17                   calling activities, and other protecting the interests of the Classes;  
18                   (iv) an award of reasonable attorneys' fees and costs; and  
19                   (v) such other and further relief that the Court deems reasonable and just.

20                   Plaintiffs and the Class members are entitled to damages as the result of  
21 Nationstar's violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 et  
22 seq. If liability is established for violation of the TCPA, the Court should award each Class  
23 member a minimum of \$500 in statutory damages for each such violation pursuant to 47 U.S.C. §  
24 227(b)(3)(B). Each Class member should also be awarded actual damages for the aggravation and  
25 nuisance incurred as the result of unsolicited and harassing calls as well as for monies paid to  
26 wireless carriers for the receipt of those calls.



1                   **DEFENDANT:** Nationstar denies that it negligently or willfully violated the  
 2 TCPA, and denies that Plaintiffs or the putative class members suffered or are entitled to any  
 3 damages.

4  
 5                   **12. SETTLEMENT AND ADR**

6                   The parties have briefly discussed settlement. Both parties have expressed their  
 7 willingness to discuss settlement following appropriate discovery. The parties have also discussed  
 8 their ADR preferences and will file a Stipulation and (Proposed) Order Selecting ADR Process  
 9 along with this Joint Case Management Statement.

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 11                   **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

12                   The parties do not consent to a having a magistrate judge conduct all further  
 13 proceedings including trial and entry of judgment.

14  
 15                   **14. OTHER REFERENCES**

16                   The Parties do not believe that this case is presently suitable for reference to  
 17 binding arbitration or a special master. This case is also not suitable for reference to the Judicial  
 18 Panel on Multidistrict Litigation.

19  
 20                   **15. NARROWING OF ISSUES**

21                   **PLAINTIFFS:** Plaintiffs believe the following issues can be narrowed by  
 22 agreement:

23                   (i) Defendant has placed telephone calls to Plaintiffs and the putative Class  
 24 members;

25                   (ii) In placing those calls, Nationstar utilized artificial or pre-recorded messages;

26                   (iii) In placing those calls, Nationstar utilized an automatic telephone dialing  
 27 system.  
 28

1 As for Nationstar's proposal of a stay, it is incorrect regarding the application of the  
2 primary jurisdiction doctrine and no basis for a stay is present in this case.

3 **DEFENDANT:** Nationstar does not believe that the issues identified by Plaintiffs  
4 could be narrowed by agreement. The parties should agree to stay this lawsuit pursuant to the  
5 primary jurisdiction doctrine; Nationstar will move to stay this lawsuit pursuant to the primary  
6 jurisdiction doctrine if Plaintiffs will not stipulate to a stay. In its motion, Nationstar will establish  
7 that this case should be stayed pursuant to the doctrine of primary jurisdiction because the FCC,  
8 rather than the Court, has primary jurisdiction to decide critical legal issues that lie at the heart of  
9 this case. Nationstar reserves its right to file a motion for summary judgment, or in the alternative,  
10 summary adjudication, at the appropriate time.

#### 12 **16. EXPEDITED TRIAL PROCEDURE**

13 The Parties do not believe that an expedited trial procedure is appropriate in this  
14 case.

#### 16 **17. SCHEDULING**

17 **PLAINTIFFS:** Plaintiffs believe all dates will need to be contingent on the transfer  
18 of the *Ruggles* case to this District and the filing of a consolidated Complaint. Once Nationstar  
19 answers the consolidated Complaint, Plaintiffs request an eight (8) month period for discovery. All  
20 other dates should be set following a case management conference to be held following a decision  
21 on class certification. As Nationstar misunderstands the primary jurisdiction doctrine, there is no  
22 need or basis for staying these proceedings.

23 **DEFENDANT:** Nationstar believes the parties should submit a proposed joint  
24 discovery and pre-trial schedule following the court's determination of Nationstar's motion to stay  
25 this action. On May 16, 2014, the United States District Court for the Central District of California  
26 transferred the *Ruggles* case to this court in response to the parties' Stipulation to Transfer *Ruggles*  
27 to the Northern District of California. Nationstar will move to stay these actions pursuant to the  
28 primary jurisdiction doctrine. In its motion, Nationstar will establish that these cases should be

1 stayed because the FCC, rather than the Court, has primary jurisdiction to decide critical legal  
2 issues that lie at the heart of this case. As such, Nationstar believes the parties should submit a  
3 proposed discovery and pre-trial schedule following the court's determination of Nationstar's  
4 motion to stay this action. In the event the court orders a briefing schedule at this time, Nationstar  
5 requests sixty (60) days to oppose Plaintiffs' motion for class certification.

6  
7 **18. TRIAL**

8 The case will be tried by a jury. Plaintiffs anticipate that a trial with respect to the  
9 Plaintiffs and the putative Class can be completed in one week.

10  
11 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

12 **PLAINTIFFS:** Plaintiffs filed their Certification of Interested Entities or Persons  
13 on February 21, 2014. The only entity with a financial interest in the case is Edelson PC, the law  
14 firm retained by Plaintiffs in this matter.

15 **DEFENDANT:** Nationstar filed its Certification of Interested Entities or Persons on April  
16 21, 2014. Pursuant to Civil L.R. 7.1-1, the undersigned, counsel of record for Nationstar  
17 Mortgage, LLC, certifies that the following listed parties may have a pecuniary interest in the  
18 outcome of this case. These representations are made to enable the Court to evaluate possible  
19 disqualification or recusal.

20 Nationstar is a Delaware limited liability company that is wholly owned by Nationstar  
21 Sub1 LLC and Nationstar Sub2 LLC. Nationstar Sub1 LLC and Nationstar Sub2 LLC are  
22 Delaware limited liability companies that are wholly owned by Nationstar Mortgage Holdings,  
23 Inc., a publically traded company on the New York Stock Exchange under the symbol NSM.  
24 Nationstar Mortgage Holdings, Inc. does not have any parent corporations, and no publicly held  
25 company has an ownership interest of 10% or more in Nationstar Mortgage Holdings, Inc.

1 Dated: May 19, 2014

Respectfully submitted,

2 ROBERT JORDAN, SEAN HALBERT, and  
3 DANA SKELTON, individually and on behalf  
4 on behalf of all others similarly situated,

NATIONSTAR MORTGAGE, LLC

5 By: /s/ Mark S. Eisen  
6 One of Plaintiff's Attorneys

By: /s/ Raymond Y. Kim  
Attorney for Defendant Nationstar  
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*Counsel for Defendant Nationstar Mortgage,  
LLC*

16 *Counsel for Plaintiffs and the putative Classes*  
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**CERTIFICATE OF SERVICE**

I, Mark S. Eisen, an attorney, hereby certify that I served the ***Joint Case Management Statement*** by causing true and accurate copies of such papers to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system, on this 19th day of May 2014.

/s/ Mark S. Eisen